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EXAMINER

TARAE, CATHERINE MICHELLE

ART UNIT	PAPER NUMBER
3623	

DATE MAILED: 09/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/811,311

Applicant(s)

DIMITRUK ET AL.

Examiner

C. Michelle Tarae

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-47 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-47 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 2/6/06.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

1. The following is a Final Office Action in response to the communication received on July 10, 2006. Claims 1, 45 and 46 have been amended. Claims 1-47 are now pending in this application.

Information Disclosure Statement

2. The examiner has reviewed the publications supplied in the Information Disclosure Statement (IDS) provided on February 6, 2006.

Response to Amendment

3. Applicant's amendments to claims 1, 45 and 46 are acknowledged.

Response to Arguments

4. Applicant's arguments are with regard to the newly added amendments. The arguments have been fully considered, but are found unpersuasive. In the Remarks, Applicant argues the following: 1) that Hayward fails to teach at least the step of making the current recommendation optionally available to be displayed as desired by the user as recited in claim 1; 2) that Hayward fails to teach the displaying of a screen set soliciting additional data where the screen set is dependent on and determined by the actions of a previous step as recited in claim 1; and 3) that Hayward fails to teach input and context sensitive information is available to assist the user in inputting input data as recited in claim 45.

In response to the arguments, Applicant's arguments have been addressed in the updated rejections to the newly added amendments provided below.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-29, 31, 32, 35, 36, 40-47 are rejected under 35 U.S.C. 102(b) as being anticipated by Hayward et al. (U.S. 5,574,828).

As per claim 1, Hayward et al. discloses a method for assisting a user in a process of decision-making or analysis involving a topic, with the aid of a computer and a display screen in association with the computer, comprising:

(a) establishing an algorithm and entering the algorithm into a computer (col. 5, lines 10-13; col. 10, lines 51-52; col. 12, lines 27-35; Figure 17; The system uses algorithms for determining the logic behind the questionnaires.);

(b) displaying a screen set having information concerning the topic (col. 13, lines 46-48; col. 14, lines 12-21 and 28-35; Figures 24-27; Graphical windows are displayed to users. The windows may include informational data.);

(c) displaying a screen set soliciting a set of input data for input by the user, and inputting said set of input data (col. 10, lines 49-51; col. 14, lines 18-21; Figures 24-27; Users are asked to answer questions.);

(d) determining a current recommendation by processing the input data through at least a portion of the algorithm (col. 7, lines 34-40; col. 12, lines 27-35; Recommendations are determined based on the input received from a user.);

(e) making the current recommendation optionally available to be displayed as desired by the user (col. 9, lines 1-2; col. 12, lines 59-62; col. 24, line 650col. 25, line 2; col. 25, lines 3-4, 17-18 and 33-34; Recommendations are outputs of the questionnaires/guidelines. When setting up the display feedback routine, the user selects which display option they desire to be displayed: the Health Risk Feedback, the Suggestion Feedback (i.e., the recommendation) or the Patient Education Feedback. Thus, the various display options are optionally available for display. Figure 73 shows a branch for the display feedback routine going to either the Health Risk Feedback display, the Suggestion Feedback display, or the Education Feedback display.);

(f) displaying a screen set soliciting additional input data and for modifying previous input data as desired, the contents of said screen set dependent on and being determined by step (d), and inputting said additional input data and/or modified previous input data (col. 3, lines 31-36 and 50-54; col. 12, lines 21-33; col. 14, lines 18-21; Figures 24-26; Users can go back and forth through the health questionnaire interface to provide additional input or change previous answers in the health questionnaire. Figures 24-26 merely represent exemplary screen sets of a hand-held device that allow a user to modify previous input data, the use of the hand-held device being described in col. 14, lines 12-27. The algorithm editor discloses how the questions are used to elicit certain information for particular guidelines/recommendations. Therefore, the questions

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displayed on the screen to the user are dependent on the rules/algorithms of the guideline and the recommendation is dependent on the answers to the questions.);

(g) repeating steps (d), (e) and (f) as desired (col. 14, lines 18-21; Figures 24-26; Users can go back and forth through the interface to provide additional input or change previous answers. See "Back Up" buttons in the interfaces.); and

(h) displaying a screen set showing the current recommendation or analysis (col. 10, lines 52-55; col. 13, lines 23-36; Recommendations are displayed to the user conducting the questionnaire.).

As per claim 2, Hayward et al. discloses the method of claim 1, wherein the information screen set includes a first plurality of screens, the first plurality of screens being organized in accordance with a first organization scheme in which the screens are presented in a particular sequence (col. 7, line 61-col. 8, line 5; col. 17, lines 44-53; The sequence of questions displayed to a user is controlled by the system, where a question is associated with a screen (see Figures 24-26).).

As per claim 3, Hayward et al. discloses the method of claim 2, wherein said first organization scheme includes the viewing of one or more particular screens being a precondition to the viewing of one or more other particular screens (col. 7, line 61-col. 8, line 5; col. 17, lines 44-53; The sequence of questions displayed to a user is controlled by the system, where a question is associated with a screen (see Figures 24-26). The question screens displayed to a user are based on the user's answers to previous questions.).

As per claim 4, Hayward et al. discloses the method of claim 3, wherein the information screen set includes a second plurality of screens, the second plurality of screens being organized in accordance with a second organization scheme different from the first organization scheme, and further comprising selecting for display the first organization scheme or the second organization scheme based upon the input data (col. 7, line 61-col. 8, line 5; col. 11, line 64-col. 12, line 2; col. 17, lines 44-53; The sequence of questions displayed to a user is based on the user's answers to previous questions. Therefore, the question sequence has more than one organization scheme based on the branching of questions.).

As per claim 5, Hayward et al. discloses the method of claim 1, wherein the screen set of step (f) include a plurality of screen sets being organized in accordance with a plurality of different organizations scheme, and further comprising selecting among said screen sets and organization schemes based on the input data (col. 7, line 61-col. 8, line 5; col. 11, line 64-col. 12, line 2; col. 17, lines 44-53; The sequence of questions displayed to a user is based on the user's answers to previous questions. Therefore, the question sequence has different organization schemes based on the branching of questions.).

As per claim 6, Hayward et al. discloses the method of claim 5, wherein the algorithm includes computational logic for processing the input data and presentation logic for selecting the screen set and organizations for display (col. 8, line 66-col. 9, line 7; col. 12, lines 29-35; The algorithms determine the sequence questions are displayed to a user based on the user's answers to previous questions.).

As per claim 7, Hayward et al. discloses the method of claim 6, wherein the computational logic includes arithmetic logic for mathematically operating on numerical input data to derive numerical processed data (col. 8, line 66-col. 9, line 7; col. 12, lines 3-12 and 29-35; The algorithms determine the sequence questions are displayed to a user based on the user's answers to previous questions. Answers may have different formats including numbers, "yes, no or not sure," and multiple choice.).

As per claim 8, Hayward et al. discloses the method of claim 7, wherein the computational logic includes operations logic for determining conclusions based at least in part on non-numeric input data (col. 12, lines 3-12; Answers may have different formats including numbers, "yes, no or not sure," and multiple choice.).

As per claim 9, Hayward et al. discloses the method of claim 8, wherein the presentation logic includes navigational logic for establishing a set of screens having a determined organization scheme based on results determined by the computational logic using the input data (col. 8, line 66-col. 9, line 7; col. 12, lines 29-35; The algorithms determine the sequence questions are displayed to a user based on the user's answers to previous questions.).

As per claim 10, Hayward et al. discloses the method of claim 9, wherein the presentation logic includes display logic for establishing a format for display of the screen sets established in claim 9 (col. 8, line 66-col. 9, line 7; col. 12, lines 29-35; The algorithms determine the sequence questions are displayed to a user based on the user's answers to previous questions.).

As per claim 11, Hayward et al. discloses the method of claim 5, wherein step (a) includes establishing a decision tree, transforming said decision tree into an algorithm, and embodying the algorithm in a computer code (col. 21, lines 34-36; The algorithm uses decision trees and branching to determine the question display sequence.).

As per claim 12, Hayward et al. discloses the method of step 11, further comprising: testing the algorithm with a set of test data to generate a test recommendation; comparing the test recommendation to a predetermined recommendation; revising the algorithm to correct for an undesired discrepancy between the test recommendation and the predetermined recommendation; and repeating the foregoing steps of this claim 11 until there is no undesired discrepancy (col. 8, lines 32-40; col. 9, lines 24-28 and 63-66; col. 10, lines 5-17; A reliability feature is used to determine inconsistencies. A simulation is also used to test the logic of the questionnaire and recommendation.).

As per claim 13, Hayward et al. discloses the method of claim 5, wherein at least some of the input data includes a degree of certainty regarding said input data (col. 12, line 4; The user answers may include "not sure" responses, which implies a degree of certainty.).

As per claim 14, Hayward et al. discloses the method of claim 13, wherein the degree of certainty data is utilized in producing recommendations (col. 7, lines 37-40; col. 12, line 4; The user answers may include "not sure" responses, which implies a degree of certainty. The answers are utilized to determine a recommendation.).

As per claim 15, Hayward et al. discloses the method of claim 12 wherein the degree of certainty data is utilized in determining the degree of certainty of a recommendation (col. 7, lines 37-40; col. 12, line 4; The user answers may include "not sure" responses, which implies a degree of certainty. The answers are utilized to determine a recommendation.).

As per claim 16, Hayward et al. discloses the method of claim 5, wherein the algorithm is used with a relational database (col. 10, lines 7-10 and 20-21; col. 24, lines 25-43).

As per claim 17, Hayward et al. discloses the method of claim 5, further comprising: determining at least one reason for a recommendation related to input data; and displaying on the screen at least one said reason (col. 13, lines 23-26; col. 36, lines 1-7; Figures 82 and 83; The system displays reasons with each guideline.).

As per claim 18, Hayward et al. discloses the method of claim 17, further comprising: determining a plurality of reasons for the recommendation that are related to the user input; and displaying on the screen a plurality of reasons for the recommendation (col. 9, lines 8-15; col. 13, lines 23-26; col. 36, lines 1-7; Figures 82 and 83; The system displays reasons with each guideline. Additionally, each recommendation has health risk statements associated therewith. A health risk is a reason for a recommendation.).

As per claim 19, Hayward et al. discloses the method of claim 18, further comprising: displaying said plurality of reasons in an order corresponding to their importance in generating the set of information (col. 12, lines 28-43; col. 13, lines 28-32;

Health risk scores are associated with a health risk, and the health risk score is weighted to prioritize possible recommendations.).

As per claim 20, Hayward et al. discloses the method of claim 5, wherein the user input is a plurality of input, and further comprising: displaying a screen inviting the user to change at least one item of input; changing at least one item of input; then using said changed input to regenerate a recommendation (col. 14, lines 18-21; Figures 24-26; Users can go back and forth through the interface to provide additional input or change previous answers. See "Back Up" buttons in the interfaces.).

As per claim 21, Hayward et al. discloses the method of claim 20, wherein the regenerated recommendation is based on said changed input together with items of input that are not changed (col. 7, lines 34-40; col. 12, lines 27-35; Recommendations are determined based on the input received from a user.).

As per claim 22, Hayward et al. discloses the method of claim 5, wherein screen displays are presented as pages (Figures 24-26).

As per claim 23, Hayward et al. discloses the method of claim 5, wherein screen displays are presented as pages, and at least one of the pages is displayed only after certain input is made by the user (col. 7, line 61-col. 8, line 5; col. 11, line 64-col. 12, line 2; col. 17, lines 44-53; Figures 24-27; The sequence of questions displayed to a user is based on the user's answers to previous questions.).

As per claim 24, Hayward et al. discloses the method of claim 5, wherein the recommendation is based in part directly upon input from the user and in part upon information derived from input from the user (col. 12, lines 28-43).

As per claim 25, Hayward et al. discloses the method of claim 1, further comprising: entering a desired recommendation into the computer; determining a discrepancy between a determined recommendation and a desired recommendation; determining a type of changed input that would eliminate said discrepancy; and displaying on a screen said type of changed input (col. 8, lines 32-40; col. 9, lines 24-28 and 63-66; col. 10, lines 5-17; A reliability feature is used to determine inconsistencies. A simulation is also used to test the logic of the questionnaire and recommendation.).

As per claim 26, Hayward et al. discloses the method of claim 25, wherein the step of determining a type of changed input includes determining a plurality of changed input, and said step of displaying on a screen said type of changed input includes displaying a plurality of said type of changed input (col. 8, lines 32-40; col. 9, lines 24-28 and 63-66; col. 10, lines 5-17; A reliability feature is used to determine inconsistencies. A simulation is also used to test the logic of the questionnaire and recommendation. Validity data is used to determine inconsistencies in the application.).

As per claim 27, Hayward et al. discloses the method of claim 1, further comprising: assigning a degree of importance to at least some of the input parameters; and wherein said determined recommendation is based at least in part on said assigned degree of importance (col. 12, lines 28-43; Health risk scores are associated with some input parameters. The health risk score is weighted to assign a degree of importance to some inputs to better determine a recommendation.).

As per claim 28, Hayward et al. discloses the method of claim 5, wherein at least a portion of a recommendation is to obtain expert advice (col. 13, lines 23-36;

Templates are used to provide a user with a recommendation that may include health interventions and clinician actions.).

As per claim 29, Hayward et al. discloses the method of claim 28, wherein said expert advice recommendation includes directions to information about an expert (col. 13, lines 23-36; Templates are used to provide a user with a recommendation that may include health interventions and clinician actions.).

As per claim 31, Hayward et al. discloses the method of claim 5, wherein step (a) includes receiving expertise from a person or organization knowledgeable in the topic, and further comprising providing consideration to said person in exchange for said expertise (col. 13, lines 23-36; Templates are used to provide a user with a recommendation that may include health interventions and clinician actions.).

As per claim 32, Hayward et al. discloses the method of claim 31, wherein said consideration includes the provision of identifying a person or organization on one or more displayed screens (col. 13, lines 23-36; Templates are used to provide a user with a recommendation that may include health interventions and clinician actions.).

As per claim 35, Hayward et al. discloses the method of claim 31, wherein said consideration is based at least in part on the number of uses of the system (col. 13, lines 23-36; Templates are used to provide a user with a recommendation that may include health interventions and clinician actions.).

As per claim 36, Hayward et al. discloses the method of claim 31, wherein said person pays consideration in addition to the provision of expertise (col. 13, lines 23-36;

Templates are used to provide a user with a recommendation that may include health interventions and clinician actions.).

As per claim 40, Hayward et al. discloses the method of claim 1, further comprising assigning degrees of importance to a plurality of potential recommendations (col. 13, lines 28-32).

As per claim 41, Hayward et al. discloses the method of claim 40, further comprising assigning degrees of importance to items of input data based at least in part on their importance in determining recommendations having assigned degrees of importance (col. 12, lines 28-43; Health risk scores are associated with some input parameters. The health risk score is weighted to assign a degree of importance to some inputs to better determine a recommendation.).

As per claim 42, Hayward et al. discloses the method of claim 41, further comprising selecting sets of screens for display based at least in part on the assigned degree of importance of input data solicited or used in said sets of screens (col. 12, lines 28-43; Health risk scores are associated with some input parameters. The health risk score is weighted to assign a degree of importance to some inputs to better determine a recommendation. Depending on which recommendation is selected will determine which recommendation screen is displayed.).

As per claim 43, Hayward et al. discloses the method of claim 5, wherein step (a) includes establishing a relationship, transforming said relationship into an algorithm, and embodying the algorithm in a computer code (col. 7, line 61-col. 8, line 5; col. 11, line 64-col. 12, line 2; col. 17, lines 44-53; Relationships are established in a guideline to

determine a correct sequence of questions. The relationship uses answers from previous questions to determine a subsequent question.).

As per claim 44, Hayward et al. discloses the method of claim 1 further including providing definitions of terms to educate the user in providing data (col. 9, lines 12-15; col. 13, lines 35-36; col. 14, lines 28-36; The system displays education materials to a user as an information tool.).

Claims 45-47 recite substantially similar subject matter to claims 1-29, 31, 32, 35, 36, 40-44 above. Therefore, claims 45-47 are rejected on the same basis as claims 1-29, 31, 32, 35, 36, 40-44 above.

Additionally, with regard to claim 45, Hayward further discloses making input and context sensitive information available to assist the user in inputting the input data (col. 10, lines 22-23 and 39-40; col. 14, lines 8-10; The system includes a Help feature that provides users with context-sensitive information to help them interact with the system.).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 30, 33, 34, 37, 38 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hayward et al. (U.S. 5,574,828) as applied above.

As per claims 30, 33 and 34, Hayward et al. does not expressly disclose the method of claims 29, 32 and 34, wherein the computer is in communication with the Internet, and said directions include a link to an expert's website; wherein the computer is in communication with a network and said identified person or organization has a site also in communication with the network, and wherein said identifying includes a link from said displayed screens to said persons' site; and wherein the network is the Internet. However, Hayward et al. does disclose the system being implemented on portable/handheld computers (col. 13, lines 59-67). Any computer can be connected to the Internet if so desired. Thus, at the time of the invention, it would have been obvious to a person of ordinary skill in the art for the system of Hayward et al. to be connected to the Internet and to link to experts' sites since doing so would provide global access to the system and enhance the recommendation process, thus providing convenient and easy access to users of the system.

As per claim 37, Hayward et al. does not expressly disclose the method of claim 36, wherein the consideration paid by said person is based at least in part on referrals to said person. However, the health interventions that may be a part of a recommendation as disclosed by Hayward et al. (col. 13, lines 23-36) could include referrals to another physician as doing so is standard practice in the industry. If a patient's health is at risk and an intervention for the risk requires seeing an expert or specialist, usually a referral is initiated. Therefore, at the time of the invention, it would have been obvious to a person of ordinary skill in the art for the system of Hayward et al. to include a referral as part of a recommendation because doing so enhances the

health recommendation system by providing a patient with a referral to a someone who can fulfill the health recommendation when the referring physician can't.

As per claims 38 and 39, Hayward et al. does not expressly disclose the method of claim 31, further comprising charging users for use of the method through at least one of a user subscription fee, a per-use fee and a blended fee; or wherein said consideration is based at least in part on revenue or profit realized from use of the method by users. However, charging users for answering questions of a health questionnaire, which is, in essence, a health consultation, is old and well known in the industry. Therefore, at the time of the invention, it would have been obvious to a person of ordinary skill in the art for the system of Hayward et al. to include charging users fees for use of the questionnaire system, or to have the consideration based in part on revenue or profit from use of the questionnaire system, because doing so would make the questionnaire more marketable to physicians or other professionals who would use the system to enhance their services. The more fees or revenue or profit a physician receives for conducting a consultation, the more likely they are to conduct the consultation.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Kaplan et al. (U.S. 5,446,891) discusses a learning system for making recommendations based on user goals.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Michelle Tarae (formerly, C. Michelle Colon) whose telephone number is 571-272-6727. The examiner can normally be reached Monday – Friday from 8:30am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz, can be reached at 571-272-6729.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

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published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "C. Michelle Tarae", enclosed in a large, stylized right-facing curly bracket.

C. Michelle Tarae
Patent Examiner
Art Unit 3623

September 6, 2006